

REMARKS

As a preliminary matter, it is noted that the Examiner has not provided an initialed copy of the Information Disclosure Statement filed on May 26, 2004. A copy of the IDS and stamped-post card showing receipt by the PTO is attached hereto for the Examiner's reference. It is respectfully requested that the Examiner provide Applicants an initialed copy of the IDS indicating that each of the prior art references cited therein have been considered and made of record.

The Examiner objects to the specification for minor informalities. In particular, the Examiner alleges that the paragraph beginning on page 4, line 4 is awkwardly phrased. It is submitted that the enclosed amendment obviates this objection, and it is therefore respectfully requested that the objection to the specification be withdrawn.

Claim 5 stands rejected under 35 U.S.C. § 102 as being anticipated by JP '718 and claim 1 stands rejected under 35 U.S.C. § 103 as being unpatentable over JP '718. These rejections are respectfully traversed for the following reasons.

In particular, the priority date of the present application (i.e., 1999) is earlier than the publication date of JP '718 (i.e., 2000). Enclosed herewith is a certified English translation of the foreign priority document to perfect Applicants' claim to foreign priority, thereby removing JP '718 as prior art to the present application.

It is noted that the Examiner has indicated that "**applicant** has not filed a certified copy of the foreign application." However, pursuant to Rule 17.2 of the PCT regulations and because Applicants have complied with Rules 17.1(a), (b) or (b^{bis}) thereof, the "**International Bureau**

shall ... furnish a copy of the priority document to [the [PTO after a request from the PTO, and the PTO shall not] ask the applicant himself to furnish it with a copy.” Accordingly, it is respectfully submitted that the PTO must request a copy of the priority document from the International Bureau.

Claim 4 stands rejected under 35 U.S.C. § 102 as being anticipated by JP ‘197. This rejection is respectfully traversed for the following reasons. Claim 4 as originally filed defines a method having two alternative processes (i.e., supplying pressurized gas at least 1.5 that of normal operation to at least one of the anode/cathode, or, supplying oxygen to the cathode) for restoring the performance of the cell. The Examiner has relied on the allegation that JP ‘197 discloses supplying oxygen to the cathode as the sole basis for the pending rejection. In order to expedite prosecution, claim 4 has been amended to delete “supplying oxygen to said cathode” as an alternative, and it is submitted that JP ‘197 does not disclose or suggest “supplying a pressurized gas to at least one of said cathode and said anode in an amount not less than 1.5 times as much as that in the normal operation.”

As anticipation under 35 U.S.C. § 102 requires that each and every element of the claim be disclosed, either expressly or inherently (noting that "inherency may not be established by probabilities or possibilities", *Scaltech Inc. v. Retec/Tetra*, 178 F.3d 1378 (Fed. Cir. 1999)), in a single prior art reference, *Akzo N.V. v. U.S. Int’l Trade Commission*, 808 F.2d 1471 (Fed. Cir. 1986), based on the forgoing, it is submitted that JP ‘197 does not anticipate claim 4.

Based on the foregoing, it is respectfully submitted that all pending claims are patentable over the cited prior art. Accordingly, it is respectfully requested that the rejections under 35 U.S.C. § 102/103 be withdrawn.

CONCLUSION

Having fully responded to all matters raised in the Office Action, Applicant submits that all claims are in condition for allowance, an indication for which is respectfully solicited. If there are any outstanding issues that might be resolved by an interview or an Examiner's amendment, the Examiner is requested to call Applicant's attorney at the telephone number shown below.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 500417 and please credit any excess fees to such deposit account.

Respectfully submitted,

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